

revocation and reissuance proceeding under § 124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

§ 124.17 Response to comments.

(a) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) At the time that any final permit decision is issued under § 124.15, the Director shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(c) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) The response to comments shall be available to the public.

§ 124.18 Administrative record for final permit when EPA is the permitting authority.

(a) The Regional Administrator shall base final permit decisions under § 124.15 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the admin-

istrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) For NPDES new source permits only, final environmental impact statement and any supplement to the final EIS;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA, UIC, PSD, and NPDES permits when the draft permit was subject to the administrative record requirements of § 124.9 and to all NPDES permits when the draft permit was included in a public notice after October 12, 1979.

(e) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental

Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(b) The Environmental Appeals Board may also decide on its initiative to review any condition of any RCRA, UIC, or PSD permit issued under this part. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Environmental Appeals Board under paragraph (a) or (b) of this section shall be given as provided in § 124.10. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) The Environmental Appeals Board may defer consideration of an appeal of a RCRA or UIC permit under this section until the completion of formal proceedings under subpart E or F relating to an NPDES permit issued to the

same facility or activity upon concluding that:

(1) The NPDES permit is likely to raise issues relevant to a decision of the RCRA or UIC appeals;

(2) The NPDES permit is likely to be appealed; and

(3) *Either*: (i) The interests of both the facility or activity and the public are not likely to be materially adversely affected by the deferral; or

(ii) Any adverse effect is outweighed by the benefits likely to result from a consolidated decision on appeal.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, or PSD permit is issued or denied by EPA and agency review procedures are exhausted. A final permit decision shall be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(2) Notice of any final agency action regarding a PSD permit shall promptly be published in the FEDERAL REGISTER.

(g) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental

Appeals Board has referred to the Administrator pursuant to § 124.2 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 57 FR 5335, Feb. 13, 1992]

§ 124.20 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

§ 124.21 Effective date of part 124.

(a) Except for paragraphs (b) and (c) of this section, part 124 will become effective July 18, 1980. Because this effective date will precede the processing of any RCRA or UIC permits, part 124 will apply in its entirety to all RCRA and UIC permits.

(b) All provisions of part 124 pertaining to the RCRA program will become effective on November 19, 1980.

(c) All provisions of part 124 pertaining to the UIC program will become effective July 18, 1980, but shall not be implemented until the effective date of 40 CFR part 146.

(d) This part does not significantly change the way in which NPDES permits are processed. Since October 12, 1979, NPDES permits have been the subject to almost identical requirements in the revised NPDES regulations which were promulgated on June 7, 1979. See *44 FR 32948*. To the extent this part changes the revised NPDES permit regulations, those changes will

take effect as to all permit proceedings in progress on July 3, 1980.

(e) This part also does not significantly change the way in which PSD permits are processed. For the most part, these regulations will also apply to PSD proceedings in progress on July 18, 1980. However, because it would be disruptive to require retroactively a formal administrative record for PSD permits issued without one, §§ 124.9 and 124.18 will apply to PSD permits for which draft permits were prepared after the effective date of these regulations.

**Subpart B—Specific Procedures
Applicable to RCRA Permits**

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a “significant change” is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, “hazardous waste management units over which EPA has permit issuance authority” refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in